

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs September 22, 2009

**STATE OF TENNESSEE v. TINA LEANNE WILSON**

**Appeal from the Circuit Court for Blount County**  
**No. C-17345 David R. Duggan, Judge**

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**No. E2008-02798-CCA-R3-CD - Filed December 18, 2009**

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The Defendant, Tina Leanne Wilson,<sup>1</sup> pled guilty in the Blount County Circuit Court to three counts of delivery of .5 grams or more of cocaine, a Schedule II narcotic and a Class B felony, in violation of Tenn. Code Ann. § 39-17-417. The trial court ordered the Defendant to serve an effective sentence of eight years on each count, to be served concurrently. The sentence was suspended to probation upon agreement by the Defendant as to the conditions of supervised probation, payment of \$6,000 in fines, payment of \$500 restitution to the drug task force, and sixty (60) hours of community service. When the Defendant failed to meet these conditions, a revocation warrant was issued against her. Following a hearing, the trial court revoked the Defendant's probation. In this appeal as of right, the Defendant argues that the trial court abused its discretion in revoking her probation and ordering her to serve the balance of the sentence in incarceration. Following our review, we affirm the judgment of the trial court.

**Tenn. R. App. P. 3; Appeal as of Right; Judgment of the Circuit Court Affirmed.**

D. KELLY THOMAS, JR., J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and ROBERT W. WEDEMEYER, JJ., joined.

J. Liddell Kirk, Knoxville, Tennessee, attorney for appellant, Tina Leanne Wilson.

Robert E. Cooper, Jr., Attorney General and Reporter; Cameron L. Hyder, Assistant Attorney General; Mike Flynn, District Attorney General; and Kathy Aslinger, Assistant District Attorney General, attorneys for appellee, State of Tennessee.

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<sup>1</sup>For purposes of this opinion, we adhere to the spelling as listed in the indictment. However, it appears from the record that the actual spelling of the Defendant's name is Tina Leann Wilson.

## OPINION

At the December 15, 2008 probation revocation hearing, probation officer Michael Caldwell testified that he was assigned to supervise the Defendant's probation. He obtained supervision of the Defendant from probation officer John Jackson, who at the time of the hearing no longer worked with the Tennessee State Probation and Parole Office. Mr. Caldwell testified that the Defendant reported to Mr. Jackson on June 16, 2008. At this initial meeting, the Defendant was instructed as to the rules and requirements of her probation and indicated that she understood these mandates. However, the Defendant never again returned to meet with Mr. Jackson, failed to serve any of the sixty (60) community service hours associated with her probation, failed to show proof of employment, failed to indicate her change in residency, failed to pay her probation fees, failed to pay her court costs, and failed to provide a mandatory DNA sample. Mr. Caldwell stated that he could not testify as to whether the Defendant was abiding by her mandated curfew since he did not know where she lived. He testified that "[t]here [was] no way" to supervise the Defendant if she refused to comply with the probation requirements.

As a result of the Defendant's delinquency, Mr. Jackson telephoned the Defendant at her listed address in Maryville, Tennessee. The Defendant's grandmother answered and informed Mr. Jackson that the Defendant no longer lived at the residence. Mr. Jackson then sent a notification of an Administrative Case Review Committee meeting to the subject's last known address, but received no response. On August 22, 2008, Mr. Jackson filed a probation violation warrant against the Defendant alleging a violation of the Supplemental Rules of Probation set forth on June 9, 2008 as follows:

Rule #3: In that subject has failed to show proof of employment while on probation.

Rule #4: In that subject moved from her listed address on or about 7/16/08, and failed to notify [the] officer of her new address.

Rule #9: In that subject had failed to report for monthly appointments since 6/16/08. Subject also failed to report for scheduled ACRC meeting on 8/20/08.

Rule #10: In that subject has failed to pay probation fees since she has been on probation.

Rule #11: In that subject has failed to pay court costs on this case since she has been on probation.

Rule #15: Subject has failed to serve any community service since she has been on probation.

At the probation revocation hearing, the Defendant testified that she is a single, twenty-two year old woman with a five-year old daughter. The Defendant's mother obtained custody of the Defendant's daughter following the Defendant's arrest. The Defendant was not using cocaine at the time of the arrest, but she aided her boyfriend in the sale of the drug and profited from such sales. On cross-examination, the Defendant admitted she used marijuana "every day." She also admitted that she understood the requirements of her probation, but knowingly violated its mandates. The Defendant testified that she "[did not] have a reason" for her delinquency. Rather, she purposefully avoided her probation meetings and the other requirements associated with her supervised probation.

The Defendant admitted that, in addition to purposefully violating her probation, she failed to report before the Knox County Criminal Court regarding a theft charge that was pending prior to her placement on probation in the instant case. The Defendant testified that she did not attend the hearing because she could not find a ride. Thereafter, the Defendant did not return to meet with her probation officer because she feared that he would alert the Knox County authorities as to her location based on her failure to appear in court.

Although the Defendant did not have a job, she had obtained job applications. The Defendant stated that she would "like to try to make something out of [her] life." She had spoken with members of her church about attending college. She also hoped to regain custody of her daughter.

### ANALYSIS

A trial court may revoke a sentence of probation upon finding by a preponderance of the evidence that the defendant has violated the conditions of her release. Tenn. Code Ann. § 40-35-311(e). The decision to revoke probation is in the sound discretion of the trial judge. State v. Kendrick, 178 S.W.3d 734, 738 (Tenn. Crim. App. 2005); State v. Mitchell, 810 S.W.2d 733, 735 (Tenn. Crim. App. 1991). The judgment of the trial court to revoke probation will be upheld on appeal unless there has been an abuse of discretion. State v. Harkins, 811 S.W.2d 79, 82 (Tenn. 1991). To find an abuse of discretion in a probation revocation case, the record must be devoid of any substantial evidence that would support the trial court's decision that a violation of the conditions of probation occurred. Id.; State v. Grear, 568 S.W.2d 285, 286 (Tenn. 1978); State v. Delp, 614 S.W.2d 395, 398 (Tenn. Crim. App. 1980). Such a finding "'reflects that the trial court's logic and reasoning was improper when viewed in light of the factual circumstances and relevant legal principles involved in a particular case.'" State v. Shaffer, 45 S.W.3d 553, 555 (Tenn. 2001) (quoting State v. Moore, 6 S.W.3d 235, 242 (Tenn. 1999)).

A trial court is not required to find that a violation of probation occurred beyond a reasonable doubt. Stamps v. State, 614 S.W.2d 71, 73 (Tenn. Crim. App. 1980). The evidence need only show that the court has exercised conscientious judgment in making the decision and has not acted

arbitrarily. Id. In reviewing the trial court’s finding, it is our obligation to examine the record and determine whether the trial court has exercised a conscientious, rather than an arbitrary, judgment. Mitchell, 810 S.W.2d at 735 (Tenn. Crim. App. 1991).

In the present case, the Defendant argues that the trial court abused its discretion in revoking her probation because it erroneously relied upon the fact that Defendant “had picked up new charges.” The Defendant correctly avers that no evidence was presented that she obtained new charges. Indeed, Mr. Caldwell testified that the Defendant acquired no additional charges after being placed on probation. In response, the State argues that “[a]lthough the defendant claims that the trial court revoked probation based upon her having ‘picked up new charges,’ there were many other reasons sufficient to support the revocation.” For instance, the “[D]efendant admitted that she violated the terms of her probation and testified that she had no reason for not reporting to her probation officer.” Accordingly, the State argues that the trial court did not abuse its discretion.

The record reflects that the trial court made a conscientious decision when it revoked the Defendant’s probation and ordered her to serve the balance of her sentence in incarceration because she “had wholly failed to take advantage of the opportunity she had been given.” The Defendant admitted that she violated the terms of her probation when she failed to return following her initial meeting with Mr. Jackson and failed to perform any of the probation requirements. The record further reflects that the defendant “didn’t have a reason” for failing to meet with her probation officer. The Defendant testified that she understood the requirements of her supervised probation, and consequences associated with her noncompliance, but she simply “didn’t show up.”

At the conclusion of the sentencing hearing, the trial court commented on the Defendant’s young age and role as a mother, stating it was a “heartbreak factor.” However, the trial court noted that the Defendant “[did] nothing, nothing --- as little as anybody I’ve seen – to have taken advantage of [the supervised probation.]” Thus, the court revoked the Defendant’s probation and ordered her to serve the balance of her sentence in incarceration. Although the trial court erroneously concluded that the Defendant had “picked up new charges,” the testimony and exhibits presented at the probation revocation hearing were sufficient to support the trial court’s finding that the Defendant violated the conditions of her probation. Accordingly, the judgment of the trial court is affirmed.

### CONCLUSION

In consideration of the foregoing and the record as a whole, the judgments of the trial court are affirmed.

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D. KELLY THOMAS, JR., JUDGE